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SPECIAL CIVIL APPLICATION NO.13289 OF 1993.

Date of Decision: 10.1.1996

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr S N Shelat, Sr.Advocate with Mr Darshan Parikh for the petitioners

Mr B B Naik, Standing Counsel for respondents No.4 & 5
Mr Kamal Trivedi, Advocate for respondents No.1 & 2

CORAM ; N N MATHUR, J.
(January 10, 1996)

ORAL JUDGMENT

I have heard Mr S N Shelat, Senior Advocate with Shri D M Parikh for the petitioners, Mr Kamal Trivedi, learned Advocate for the respondent bank and Mr B B Naik, learned Advocate for the CBI.

2. The grievance of the petitioners in this Special Civil Application under Article 226 of the Constitution of India is that the respondent-State Bank of Indore, (hereinafter referred to as 'the Bank') has arbitrarily and illegally withheld the F.C.N.R. deposit of U.S. \$313462.85 which has become mature on 8.1.1994.

3. The Government of India, in order to give incentives to Non-Resident Indians to bring Foreign Exchange and to protect them against exchange rate fluctuations, announced a scheme known as Foreign currency Non-Resident Account under NR (E) (Non Resident External) Account Rules permitting acceptance of deposits in designated foreign currencies instead of Indian Rupees. The accounts under the above scheme are known as FCNR (Foreign Currency Non-resident External Accounts). Under the scheme the accounts are maintained in designated foreign currencies. The principal amount along with the interest accrued therein can be withdrawn in foreign currency itself, thus it avoids the risk of exchange rate fluctuations. The account enjoys all the benefits including tax benefits available to NR (E) accounts.

4. Petitioners No.1 & 3 are NRIs. Petitioner No.2 is a British Passport holder of Indian origin. All the three petitioners are residing in Hongkong and carrying on their business there. The petition has been filed through Shri Parimal M Parikh, a Chartered Accountant in his capacity as Power of Attorney holder of the petitioners.

5. The say of the petitioner is that petitioner No.1 Harshil K Kothari had FCNR deposits with Canara Bank, Nariman Point Branch and on maturity under his instructions, the maturity amount of US \$ 313463.85 was transferred through Bank of California International to Account No.9143-6697-1121 of respondent Bank as FCNR deposits for a period of one year w.e.f. 8.1.1993. As the said Harshil Kothari did not receive the FCNR deposit receipt, despite telephonic reminders from Hongkong and as such the petitioners instructed Mr Parimal M Parikh, a Chartered Accountant at Bombay to take up the matter with the Bank. Thus, Mr Parikh under the instruction of his clients sent a letter dated 21.7.1993 to the respondent Bank. The Bank, vide communication dated 24.7.1993, enquired from Mr Harshil Kothari to confirm whether he has received the Receipt of the subject deposit, which was answered in negative. On further persuasion of Mr Parikh, vide communication dated 4.9.1993, the petitioners were advised to execute an indemnity Bond so that a duplicate receipt can be issued. All necessary requirements were undertaken by the petitioners. The respondent Bank, for

the first time, by communication dated 29.9.1973, informed Mr Harshil Kothari at Hongkong that enquiries have revealed that the said deposit receipt which at the moment is not traceable, but the deposit has been recorded as Margin for the guarantee facility made available to M/s.Arvin Liquid Gases Ltd. The petitioner, under communication under dated 4.11.93, made a statement that "none of the depositors know or even knew in past Shri Arvind A Patel of M/s. Arvind Liquid Gas Ltd. and/or Directors of M/s. Firstware Corporation or have had any dealings with them ever in the past" It was further said that "they are strangers to us and we categorically deny any knowledge about them or their business."

6. Mr P C Shah presently working as Branch Manager of State Bank of Indore at Baroda has filed an affidavit. The facts with respect to deposit and communications between the parties are not denied by the respondent Bank. However, it is stated that there is a fraud in the alleged Bank Guarantee transactions wherein the petitioners' FCNR receipt is alleged to have been recorded as security and in that connection they have suspended the then Branch Manager Shri Anil Sharma and that the circumstances of the case are capable of creating some lingering doubt of connecting the petitioners with the alleged fraud. Thus the Bank filed complaint with C.B.I. on 8.10.1993.

7. Mr Kamal Trivedi, learned Advocate for the Bank submits that the fact that the deposit was made by transfer from Canara Bank directly with Bank of California, U.S.A. in the account of the respondent Bank is unusual and the possibility cannot be ruled out that the deposit was managed by the third party, it may be on account of direct relationship with the petitioners or otherwise. This circumstance indicates that Anil Sharma, the erstwhile Branch Manager, Director of Arvind Liquid Gas Ltd. as well as the petitioners are hand in glove for perpetrating fraud upon the respondent Bank. Mr B B Naik, learned Advocate appearing for the C.B.I. submits that the matter is still under investigation and some revealing fact may come out after the interrogation of Mr Arvind A. Patel.

8. Mr S N Shelat, learned Senior Advocate, countervailing the contentions, submits that there is nothing unusual in transferring the deposit with the respondent Bank directly. As the petitioners are permanently residing at Hongkong and as a practice, they have been directly sending the deposit amount or matured

FDR for deposit/withdrawal as the case may be to the Bank with which the amounts were to be invested. Initial deposit was made on 30.12.89 with Vijaya Bank, Bangalore, which became mature on 30.12.89 with maturity value of US\$ 268,620. This was transferred to Vijaya Bank, Calcutta from 3.1.1991. The deposit matured on 3.1.92, with maturity amount of US \$ 293,339.75. This was again transferred and reinvested with Canara Bank, Bombay to mature on 3.1.93. The maturity value of value of US \$ 313,462.85 was then transferred to mature on 3.1.93. With respect to investigation, Mr Shelat has invited my attention to applications dated 18.11.95, submitted by Inspector of Police, CBI, B.S.&F.C. Bombay and submits that investigation is almost complete and the conclusion of the investigation is that Anil Sharma has abused his official position by releasing pre-maturely margin money with respect to Bank guarantee and retaining collateral security without the consent of Harshil Kothari, clinched the entire issue, exonerating the petitioners of any doubt.

9. I have considered the rival contentions of the parties. The CBI investigation is still pending and as such it would be inexpedient to express any opinion on the merit of the case, i.e. the involvement of the petitioners in the alleged fraud with the Bank, at this stage. However, it is also to be borne in mind that nobody can be deprived of his deposit with Bank for unreasonably long period just on lingering doubt. It may be recalled that to the maximum according to the respondent Bank also there is only a lingering doubt with respect to involvement of petitioners in the alleged fraud. The circumstance with respect to deposit by transfer has been reasonably explained. In spite of the fact that investigation is pending with CBI for last more than 2 years, nothing tangible has come out against the petitioners. Mr Naik, learned Advocate for the CBI does not appear to be correct in saying that some facts may be revealed on interrogation of Mr Arvind A Patel. The order of Additional Chief Judicial Magistrate, 3rd Court, Esplando, Bombay shows that Mr Arvind A Patel was remanded to custody upto 13.11.1995. Thus, it cannot be said that he is still in police custody. The hearing of this case has been postponed under the hope that investigation shall be complete. This Court, almost a year back, adjourned the hearing of the case as Mr Naik, learned Advocate for CBI wanted to enquire about the progress of the case. The CBI has produced nothing till today before this Court which may indicate towards the involvement of the petitioners in the alleged fraud. On the contrary, the case of the CBI which ap.....

remand application is

"Accused Anil Sharma also abusing his official position by way of releasing prematurely margin money in respect of the aforesaid Bank guarantee and retaining a collateral security of FCNR deposit of US \$ 3,13,462.85 in the name of one Harshil Kantilal Kothari without his consent."

10. It is surprising that loan is granted to Residents without the consent and knowledge of the NRI on the security of FCNR deposit. Nothing has been produced including any endorsement that the petitioners authorised holding of the said deposit as margin money. It is not made clear that if under the rules governing FCNR deposits, the Bank was even competent to accept the same as margin money, even if the petitioners desired so. Another important fact deserves to be noticed is that one Monoplan Industrial Credit Corporation has filed Summary Suit No.3194/93 before the Bombay High Court. In the said suit, affidavit has been filed by the respondent bank stating that Mr Anil Sharma, the erstwhile Branch Manager of the Baroda Branch, in collusion with one Arvind Liquid Gas Ltd. and one Firstware Corporation, issued a Bank guarantee without the sanctioning powers and against the specific directions of the State Bank of India.

11. Thus, taking the practical view of legitimate interference flowing from the facts and circumstances as discussed above, I allow this Special Civil Application and direct the respondent Bank to pay or transfer the maturity value of the FCNR deposit of US \$ 313462.85 with interest thereon in accordance with the relevant scheme provided the petitioners execute a usual Indemnity Bond or agreement as required by the respondent Bank.

Rule made absolute to the aforesaid extent. Cost to be payable by the respondent Bank to the petitioners.

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